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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,749	12/08/2003	David Angelo Tomasso	CDS-0290	2640
27777 PHILIP S. JOH	7590 03/08/2007 INSON	EXAMINER		
JOHNSON & J	OHNSON	LEVKOVICH, NATALIA A		
	N & JOHNSON PLAZA WICK, NJ 08933-7003	,	ART UNIT	PAPER NUMBER
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SHORTENED STATUTOR	Y PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE	
31 DAYS		03/08/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.  Easterdance mem by the investigation and state of the processor of the p			Application No.	Applicant(s)				
Natalia Levkovich  - The MAILING DATE of this communication appears on the cover sheet with the correspondence address - Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.  If NO sered for reply is podded above, the maximum statutory period will apply and will expire \$1.00 MONTHS from the melling date of this communication.  If NO sered for reply is podded above, the maximum statutory period will apply and will expire \$1.00 MONTHS from the melling date of this communication.  If NO sered for reply is podded above, the maximum statutory period will apply and will expire \$1.00 MONTHS from the melling date of this communication.  If NO sered for reply is podded above, the maximum statutory period will apply and will expire \$1.00 MONTHS from the melling date of this communication.  If NO sered for reply is podded above, the maximum statutory period will apply and will expire \$1.00 MONTHS from the melling date of this communication.  If NO sered for reply is podded above, the maximum statutory period will apply and will expire \$1.00 MONTHS from the melling date of this communication.  Provided the service of the service and the servi	Office Action Summary		10/730,749	TOMASSO ET AL	TOMASSO ET AL.			
- The MAILING DATE of this communication appears on the cover sheet with the correspondence address - Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.  Extensions (internary be available under the provision of 37 FR1 1/36). In one event, frower, may aregly be timely filed in the provision of 37 FR1 1/36. In one event, frower, may aregly be timely filed in the provision of 37 FR1 1/36. In one event, frower, may aregly be timely filed in the communication of 37 FR1 1/36. In one event, frower, may aregly be timely filed in the provision of 37 FR1 1/36. In one event, frower, may aregly be timely filed in the provision of 37 FR1 1/36. In one event of the communication. Failur to require with the provision of the communication. Failur to require the mailing date of this communication. Failur to require the mailing date of this communication, even if firely filed, may reduce any exempt paint the mailing date of this communication. Experiment of the communication of the communication is even if firely filed, may reduce any exempt paint in mailing the office is a 7 GP 1.764.  1) Responsive to communication (s) filed on 08 December 2003.  2a) This action is FINAL.  2b) This action is non-final.  3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) Claim(s) 1-31 is/are pending in the application.  4a) Of the above claim(s) is/are allowed.  5) Claim(s) is/are allowed.  5) Claim(s) is/are allowed.  6) Claim(s) is/are allowed.  7) Claim(s) is/are allowed.  8) Claim(s) 1-31 are subject to restriction and/or election requirement.  Application Papers  9) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner.  Application Papers  9) The drawing sheet(s) including the correction is required if the drawing(s)			Examiner	Art Unit				
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## **DETAILED ACTION**

## Election/Restrictions

- 1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-17 and 30-31, drawn to an analyzer, classified in class 422, subclass 72.
  - II. Claims 18-21, drawn to a method of transporting a probe tip, classified in class 436, subclass 49.
  - III. Claims 22-28, drawn to a method of analyzing a sample s, classified in class 436, subclass 47.
- IV. Claim 29, drawn to a software carrier, classified in class 711, subclass 4.

  The inventions are distinct, each from the other because of the following reasons:
- 2. Inventions II, III and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus can be used as a sample storage system.
- 3. Inventions I and IV are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In

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the instant case the sample analyzer, as claimed, does not include a controller / computer which would be used together with the 'computer usable medium' of claim 29.

4. Note that the claims of Group I, if elected, are subject to further restriction, since the group contains claims directed to the following patentably distinct species of the claimed invention:

Species I (claims 1-14 and 30-31), drawn to drawn to an analyzer comprising a transport system with a holder for a probe tip dispenser, test elements and sample supply.

Species II (claims 15-17, drawn to drawn to an analyzer comprising a transport system with a centrifuge module.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over

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the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

- 5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
- 6. A telephone call was made to Mr. Todd Burns on 02/28/07 to request an oral election to the above restriction requirement, but did not result in an election being made.

## Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Natalia Levkovich whose telephone number is 571-272-2462. The examiner can normally be reached on Mon-Fri, 8 a.m.-4p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jill Warden
Supervisory Patent Examiner
Technology Center 1700